

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

TONY MUIR,	)	
	)	
Plaintiff,	)	Case No. 11-947-HO
	)	
v.	)	ORDER
	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	
	)	

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Plaintiff brings this proceeding pursuant to section 205(g) of the Social Security Act (the Act), as amended, 42 U.S.C. § 405(g), to obtain judicial review of the Commissioner's final decision denying plaintiff's application for disability insurance benefits and supplemental security income.

The Commissioner moves to dismiss contending that plaintiff failed to timely seek review of the Commissioner's final decision.

See 42 U.S.C. § 405(g) (civil action to be commenced within 60 days

after the mailing of notice).

The Appeals Council sent notice of its decision denying review of the ALJ's decision denying benefits to plaintiff on May 26, 2011. The notice informed plaintiff that she had 60 days to seek review in federal court and that the 60 days starts the day after she receives notice. Receipt is presumed to be within five days of the date on the notice. Plaintiff did not seek an extension. Accordingly, plaintiff had until August 1, 2011, to commence this action. Plaintiff did not commence this action until August 5, 2011. Therefore, the motion to dismiss is granted.

CONCLUSION

The Commissioner's motion to dismiss (#8) is granted, and this proceeding is dismissed.

DATED this 17<sup>th</sup> day of Jan. 2012.

Michael J. Hogan  
UNITED STATES DISTRICT JUDGE